

1891-002 Chancery Cause: Charles D. Covey & wife vs. Nimrod & Be to  
Lee Co.

Russell, Grabeel, Whitehead, McElroy, Yeary, Pennington, Fleenor, 1 Plat  
Morgan

-Deed

CA-Contract Dispute  
T-Property



To the honorable A. S. K. Morrison Judge  
of the Circuit Court of Lee County Virginia.  
Humbly Complaining your orator & oratrix  
Charles D. Covey & Martha J. Covey his wife,  
would respectfully represent and shew  
unto your honor, that on the 26<sup>th</sup> day of  
May 1883, Nimrod Vae, the father of your  
oratrix, being seized in fee simple of a tract  
of 400 acres of land, lying and being in  
said county in Poor Valley, on the North  
Side of Poor Valley ridge and South Side of  
Cumberland Mountain, conveyed by proper  
deed to your oratrix, eighty acres, part of said  
tract, to be laid off to her by the said grantor,  
in the manner in said deed specified, reserving  
to himself and wife, and to the survivor of  
them, the use and occupation of said 80 acres  
during their natural lives, all of which will  
appear from a copy of said deed herewith  
filed marked "A" as part hereof. And at the  
time of the execution & delivery of said deed,  
to your oratrix, <sup>on 5<sup>th</sup> June thereafter</sup> her said father promised <sup>agreed with</sup> her  
that he would lay off said 80 acres on the East  
end of said farm, ~~and would do so at once,~~  
yet, although seven years have elapsed since  
the execution of said deed to your oratrix, the  
said grantor has failed & refused and still dath  
fail and refuse to lay off to your oratrix the said  
80 acres of land, <sup>at any place on said farm</sup> as by said deed he undertook



and bound himself to do, The said tract of land is principally valuable on account of the timber & iron ore on the same, and the location of a rail road, now nearly completed through said land, gives to the timber and iron ore a high Market Value, and your orator & oratrix are advised that the grantor in said deed has no right to sell the timber, nor the iron ore on said <sup>tract of</sup> land, before laying off to your oratrix her said 80 acres, nor has he the right then to sell the same on her portions of said land, and thus damage her reversionary interest in said land.

Nevertheless the said grantor has sold the poplar trees standing on the western portion of said tract, and the same are now claimed by one A. J. Russell, who intends cutting and removing said trees in the near future, and has sold to one J. W. M. Grabeel, for \$300<sup>00</sup>, the entire white oak & chestnut oak timber on a portion of said tract on the east end thereof, and the said Grabeel is now engaged, with a large force of hands and teams cutting and removing said oak timber and sawing the same into cross ties for the said Rail Road, and is removing said cross ties from said land on to the right-of-way of said rail road company, as fast as they are sawed, and the said grantor threatens to sell the timber and iron ore on the remaining portion and on all of said tract of land, This your complainants



allege is a great waste and an irreparable damage to the reversion and to their interest in said land. As to the said grantor & his wife, the father and mother of your oratrix, having the use and occupation of said land during their natural lives, as provided in said deed, we have no objection to that, but upon the contrary it would afford us pleasure to see them thus properly exercise that reserved right, but we humbly submit that they should not go beyond that right and destroy the value of the reversion in said real estate. The object of this bill therefore is to enjoin and inhibit the said W. J. Russell from cutting and removing the said poplar trees from said land and to enjoin and inhibit the said Graebel from cutting any more timber on said land and from removing any more of that already cut, the said Graebel being, as your orator & oratrix are informed, insolvent, and to enjoin and inhibit the said Vinnsd Tce from selling or otherwise disposing of the timber or iron ore on said land, until he shall have laid off to your oratrix her said 80 acres of said land and that said Vinnsd Tce be compelled to lay off to your oratrix her said 80 acres on the East end of said farm, <sup>or at some other point</sup> or that Commissioners be appointed to lay off the same; that a receiver be appointed to take charge of and sell the timber and cross ties already cut by said Graebel



x: and that an account be taken of the  
ties cut and removed from said land  
by said Gsahel, and of all masts  
actually done on said land.

and not removed from said land, and hold  
the proceeds of said sale subject to the future  
order of the Court, and that an account be taken  
of the ties already cut and removed.  
To this end your orator & oratrix pray, that  
the said Vinred Tce, H. J. Russell and J. W. M.  
Gsahel be made the parties defendants  
to this bill and required to answer the same  
on oath; that on a hearing an injunction  
be granted restraining and inhibiting the  
said H. J. Russell from cutting & removing  
the said poplar timber from said land and  
the said Gsahel from cutting any more  
of the said oak timber on said land, or rem-  
oving any more of that already cut therefrom  
and the said Vinred Tce from selling any  
more of the timber or the iron ore on said  
land until he shall have laid, or commission-  
ers shall have laid, off to your oratrix her  
said 80 acres; and that said Tce be compelled  
to lay off to your oratrix the said 80 acres on  
the east end of said farm as he agreed and  
undertook to do, <sup>or at some other part of said tract</sup> or that Court be appointed  
to thus lay off the same; that a receiver be  
appointed to take charge of and sell the  
timber and cross ties already cut, but not  
removed from said land, by said Gsahel,  
and hold the proceeds of said sale subject to  
the future order of the Court, and for all  
further and general relief, pray process issue



directed &c. And as in duty bound,  
your orator & oratrix will ever pray &c.  
James W Orr, Jr.

Virginia, Lee County, to wit.

This day Charles D Coney personally appeared before me, the undersigned Clerk of the Circuit Court of Lee County Virginia, and made oath that the facts stated in the foregoing bill are true so far as they depend upon his own knowledge, and so far as stated upon information derived from others he believes them to be true. Given under my hand this the 1st day of August 1898

J. A. Hyatt C



1890. Nov Rules S. N. Conf  
" 2 " " Cause set  
for hearing.

Inspection granted  
 pursuant to the prayer  
 of the bill. insuring the  
 depts. for from selling or  
 removing or interfering  
 with said timber trees  
 on said 400 acres of land  
 in said depts. Russell & Gayfield  
 from cutting sawing  
 removing or interfering  
 with the said timber trees  
 on said 400 acres of land  
 in said depts. Russell & Gayfield  
 will not be a cause of action  
 until the ptty or some  
 one for him execute bond  
 with good security for  
 the full of this court  
 costs and as the law  
 directs in the penalty of  
 \$2000.00  
 H. K. Morrison  
 is the clk of  
 the Ct of  
 the County of  
 Aug 10 1898

1890<sup>25</sup> Sept 4<sup>2</sup> Sp. And In order  
 Secured. And N. Pac field  
 " 9<sup>25</sup> N. as to other effects  
 " 1<sup>st</sup> 4<sup>2</sup> Octo Rules carried



To The Hon. H. K. Moirsen Judge of the Circuit Court of Lee County Virginia  
Your orator Amos A. Roe, who humbly  
complaining would respectfully represent that heretofore to wit on Aug 10<sup>th</sup>, 1890, Charles D. Covey and Martha J. Covey his wife filed their bill in this Hon. Court against him and others, and obtained an injunction against your orator and Co. defendants therein among other things to injure and inhibit your Complainant, from cutting or removing certain timber logs and lumber on the upper end of a certain tract of 400 acres of land known as your orators home place whereon he then and now resides in this County. The said Covey and wife laid claim to an undivided 80 acres of said 400<sup>=</sup> and moreover claimed that at the 80 acres was to be laid off on the said upper or east end of the 400 acres, where the timber was then being cut and carried away, in said injunction the plff was to execute bond, and did execute it in a penalty of \$2000.00 conditioned to pay all costs and damages that might be awarded against them or



sustained by any person by reason of  
suing out said injunction, the said plffs  
Charles D. Levey Martha J. Levey and M.D.  
L. Geary as their security did execute  
such bond. Said Cause was matured  
your orator answered and depositions  
were taken and the same was finally  
submitted for decision, and on Sept  
3<sup>d</sup> 1891 the said Court rendered a decree  
therein, by which said injunction was  
perpetuated as to 80 acres of land in  
said Cause assigned them, by your orator  
but which were not assigned on the  
upper end of said premises where  
the trees stood and the logs and lumber  
lay, and decreed to your orator his  
Costs, and the Court dissolved said  
injunction, "as to the residue of said  
400 acre Tract without damage."

Said Cause and all the orders, decrees  
proofs and pleadings therein are  
herewith filed as part hereof and  
prayed to be considered herewith.

Your orator alleges that in said Cause  
he did not file any Crop bill or  
other proceeding nor did the plff  
put in issue by the allegations of



1  
his bill the question of damages, accru-  
ing to, and sustained by your Com-  
plainant by reason of said injunction  
and the damages resulting from being  
out said injunction was in no wise  
in issue in said Cause, but only the  
matter above referred to. Your orator  
is advised that the decree so far as  
it dissolved said injunction without  
~~rescued~~<sup>damages</sup> to the removal of said 400 acre  
tract was erroneous and not warranted  
by law, and was greatly to the prejudice  
of your orator.

At the time of the being out of said  
injunction your orator had contracted  
to H. J. Russell and J. W. M. Gray to cut the timber  
so cut and standing on the upper end of  
said 400 acre tract and the removal of  
which was enjoined at the price of  
\$200.00 one hundred of which was then  
due. The timber was intended for rail  
road ties and lumber to be used on  
the L. & N. Railroad then in course of  
construction over & through said land  
The injunction was not dissolved until  
as above stated Sept 30 1891, the rail road  
had then been completed, his vendors  
were the owners of a portable saw



mill and could not use said timber  
afterwards, your orator could not  
by reason of said injunction com-  
ply with his contract of sale, and  
so could not perform it, his vendee  
moved away, the timber has be-  
come rotten and useless and there is no  
market for it same so that your  
orator totally lost its said contract  
and its money due thereon, and this  
damage nor no part thereof has  
ever been paid him by its said  
plessor their security M. D. & Geary

The object of this bill is to review  
said cause, and have an enquiry of  
its damages sustained by your com-  
plainant ascertained and a decree ren-  
dered in his favor against the obligors  
of said injunction bond for the same  
To this end he prays that Charles  
D. Geary Martha J. Geary and M. D.  
L. ~~Gray~~ Geary be made parties  
defendant to this bill that said  
cause be reviewed and the error above  
set out corrected, that an enquiry of  
its damages be made and on a  
hearing a decree be rendered in  
favor of your orator against the



said obligors in said injunction bond  
found filed with said Cause as part  
hereof in favor of your order for  
the damages sustained by said injunction  
your order would further state that  
by reason of the suing out of said  
injunction he has lost much time  
and been compelled to pay out large  
sums of money for Counsel fees  
hotel bills and numerous outlays  
connected with said Cause and grow-  
ing out of the suing out of said  
injunction all of which including  
said timber amounts to about \$500  
and that he is advised is properly  
recoverable in and upon said in-  
junction bond and that he also may  
may be inquired into also. And he  
prays for a review of said Cause & a cor-  
rection of the same and for all other  
further & general relief may Sup-  
erintendent.

A. Q. Pridemore



Minrod Hal <sup>LB</sup>

Bill of Review

Charles D. Covey et al



To The Hon. A. S. K. Morrison Judge of  
the Circuit Court of Lee County Va.

The Demurer and separate answer of Amurod hoc to a bill filed in this Hon. Court against him and others by Charles D. Covey and Martha J. Covey his wife.

Respondent says the plffs bill is not sufficient in law to compel him to further answer and of this he prays judgement of the Court &c.

But if any other or further answer be deemed necessary, answering he says it is true, that he is owner of 400 acres of land situated as described by the plffs bill and that on the 26<sup>th</sup> day of May 1883, he deeded the female plff 80 acres of said tract, to be laid off by respondent, in any part of said 400 acres so that the same was done by parallel lines square across said property. It is also true that the female plaintiff is the daughter of respondent, and that he gave her



these lands, and that fact ought to  
bring a blush of shame, to the  
cheeks of the Complainant, when they  
recall the fact, that respondent is old  
and unable to work, and that he <sup>of the</sup>  
little of this world's goods, <sup>possessed by him</sup> ~~cleverly~~  
generously with them. It is not  
true however that respondent, ever  
in any way agreed to lay off said  
80 acres on its east-end, west-end or  
middle, he may have signified in  
conversations that he would do so, but  
never in the form of Contract or  
promise, it was and is the <sup>of respondent</sup> intention, at  
some future day to so lay off said  
lands in exact conformity with said  
deed, but just where he has not  
to this day fully determined. He has  
and now contemplates, laying off his  
son David not one hundred acres on  
the west end of said tract, and when  
he does so it will cover every poplar  
~~except possibly three~~  
tree he has sold, should he determine  
(and he is advised he has the right to do  
so) to lay the poplar lot of next, it  
would be upon land on which not  
a tree has been cut, <sup>except the 3 poplars</sup> and this respondent.



out does not propose to lay off  
the Complainant's land where he has  
sold or cut timber - He denies that he  
bears the relation strictly of a life  
tenant, he is advised that his reser-  
vation in his deed carries with it  
the full use enjoyment & Control of said  
land, free from the intermeddling and  
Control of the Complainant, and that  
is the reason why respondent, reserved  
the right to hold it in an undivided  
state, he has more than 200 acres of  
said tract on which no timber has been  
cut. Respondent has not sold nor  
does he propose to sell any more  
one on the peffs share, he has not  
sold any of his cows, and if he  
does he will not interfere with the  
peffs - He gave the land to her and wants  
her to have it she is his child and  
he loves her, but it pains him to  
see her so ungrateful, to worst and over  
indulgent father, Respondent has only  
sold 50 poplar trees and the oak on  
about 20 acres, out of this large boundary  
of wood land, and this he did out-  
the pressing want for ready money  
which in old age & feeble health



has been forced upon him. Respondent again reiterates that he will where he has fully consulted his feeling and the interests of his other children lay off the puffs their lot in conformity with said deed out of land where no timber or bore one has been sold. Respondent denies the puffs right to have said land now or in advance of his own decision pertained & that Commissioners have any right to do so or that a receiver should take charge of his land or that any account of said timber should be taken it is his free from the claims of the puffs and cut from his own land. And having now fully answered he prays to be dismissed with his costs.

A. L. Ordernore, p. J.

Sworn to before me in due form by Winneb. Nov this 6<sup>th</sup> day of Sept. 1890.

J. A. S. Hyatt Clerk

Winneb. Nov  
ads  
Chas. D. Coover setae  
Filed 2<sup>nd</sup> Sept 1890  
J. A. S. Hyatt



x and is dissolved as to the residue  
of 400 acres  
of land, tract without damages.

Charles D Covey & wife

vs

Nimrod Roe et al

} In Chy,

This Cause came on again  
to be heard upon the papers  
formerly read & a report of L<sup>r</sup>-M.  
Carnival surveyor to which there  
are no exceptions & was argued  
by counsel, on consideration of  
which & for reasons appearing to  
the court, <sup>it is ordered that</sup> the injunction heretofore  
awarded in said cause be &  
the same is hereby perpetuated  
without damages as to the  
land layed off and assigned  
Martha J Covey wife of Charles  
& Covey subject to the life  
estate of Nimrod Roe. And  
by agreement of the parties by their counsel and  
it appearing from a deed  
filed in this cause that  
Martha J Covey & Charles D.  
Covey did on the 28<sup>th</sup> day of  
April 1891 sell & convey the land  
assigned them by said Carnival  
surveyor in this cause to said  
R. Roe & Wm H C. Roe except ~~100~~  
50 feet on either side of the centre  
line of the Louisville & Nashville Railroad



as & for its right of way. It is  
therefore ordered, adjudged & decreed  
that the said Martha J. Covey wife  
of Charles D. Covey, <sup>heir</sup> the said 100  
feet right of way & that said  
R. Roe & Wm H. C. Roe take &  
hold the residue of the said  
80 acres assigned by & M. Car  
mical to Martha J. Covey & by  
her & her said husband conveyed  
as aforesaid to the said said  
R. & Wm H. C. Roe, and the, <sup>said</sup> said  
R. & Wm H. C. Roe by counsel  
agreeing to assume all risk  
on account of a claim asserted  
by Tyler Comer & his wife to a  
part of said 80 acres. The said  
Martha J. Covey & her said husband  
Charles D. Covey is hereby released  
& absolved from any action or dam  
age on account of said Tyler Comer &  
wife's claim. And it is further  
adjudged, ordered & decreed that  
Minors Roe recover from Charles  
D. Covey & Martha J. Covey the costs  
of this suit and the said  
Charles D. Covey & Martha J. Covey



his wife pay the same to him  
and no further action being  
necessary the cause is stricken  
from the docket.



Charles D. Currier

or } Deceitful

Minors Noel et al

Entered Chas OB

355- Sept. 3<sup>rd</sup> 1891.

J. A. Hyatt ©

Enter Ohio

H. S. K. M.

Sept 3<sup>rd</sup> 1891-



And the defendants H. J. Russell & J. W. M.  
Grapel ~~fail to~~ having been duly served  
with process and failing to appear & plead or  
demur or answer the bill is taken for  
confessed against them.

Charles D. Bauey & Martha J. Bauey his wife, ~~Plffs~~  
against-  
Nimrod Vae & others Defts <sup>John</sup> Schantz  
This cause came on this day to be heard upon  
the bill of the plaintiffs and exhibit therewith,  
the demurrer & answer of the Defendant  
Nimrod Vae with joinder in said demurrer  
and <sup>general</sup> replication to said answer, the deposi-  
tions of witnesses, and was argued by  
Counsel. In consideration thereof the Court  
is of opinion, that the female plaintiff is entitled  
to have the eighty acres of land laid off to  
her as provided in the deed by Nimrod Vae  
to said plaintiff, of May 26th 1883. It is there-  
fore adjudged, ordered and decreed that the  
said Nimrod Vae, within sixty days from  
the adjournment of this Court, lay off to the  
said Martha J. Bauey, eighty acres, out of the  
400 acre tract <sup>of land</sup>, in the bill mentioned, and  
that he lay off the same in the manner  
provided in said deed of May 26th 1883,  
and define the same by proper metes and  
bounds so that the same can be identified.  
and should said Vae fail to thus lay off  
said eighty acres, within the time aforesaid,  
then L. C. Elliott, C. S. Woodward & S. B. Orr  
who are hereby appointed Commissioners for  
the purpose, will go upon the said tract of  
400 acres of land and lay off and assign



to said Martha J. Cony eighty acres out of  
 said <sup>400 acre</sup> tract of land, <sup>+ defining the same by proper metes & bounds</sup> so that the same is laid off  
 by parallel lines running across the Poor  
 Valley from the South line of said 400 acre  
 tract on the North side of the Poor Valley ridge  
 to the North line of said tract on the South  
 side of ~~said~~ <sup>Camdenburg</sup> Mountain, so that said eighty  
 acres shall run square across said Poor  
 Valley, and they will report their action  
 to the next term of this court, ~~and the~~  
 Cause is continued.

Said Court will ascertain whether the timber on said 80 acres is cut or if so what amount of timber

Chas. D. Cony & wife  
 vs. E. Deere.

Wm. Conrad, for itals.  
 Gertrude Choy O.B.  
 page 311. Decr  
 4<sup>th</sup> 1890.  
 J. S. Westryette

Dec 17 1890.

Enter this decree  
 Wm. Conrad  
 Decr 4<sup>th</sup> 1890.



Mr Amos Noel.

You will please take notice  
that on the 28th day of November  
1891, at the dwelling house of John  
Pennington in Lee County Va, we  
will take the depositions of said  
Pennington & others which are  
intended to be read as evidence  
in our behalf in a suit in Ejectment  
depending in the Circuit Court of  
said County in which you are  
Plaintiff and we are defendants.  
Nov 26th 1891.

Lyle Coomer,  
Martha Coomer.  
By Counsel.



I Wm Woodward do swear that on the  
26th day of Nov 1891, I offered a copy  
of the within notice, <sup>to</sup> Nimrod Val and  
he refused to take <sup>it</sup> & said he could not  
read it any way, and I read the notice  
to him.

Wm Woodward

Sworn to and subscribed before me  
this 27th 1891. James W. Orr, Commr  
in Chancery.

Lyder Coomer &  
wife

v. Nimrod Val

Nimrod Val



Nimrod Nae  
vs.  
Tyler Coomer +  
Martha Coomer } Ejectment

The deposition of John Pennington  
and

taken before me H. C. Forslyn a  
Justice of the Peace for the County of  
Lee, in the State of Virginia on  
the 28<sup>th</sup> day of November 1891, at  
the dwelling house of John Pennington  
in said County, agreeably to the annexed  
Notice, to be read as evidence on  
behalf of the defendants, in a suit  
now pending in the Circuit Court of Lee  
County, in which Nimrod Nae is  
Plaintiff and Tyler Coomer and  
Martha Coomer are defendants.

The said John Pennington a witness  
of lawful age, produced by the defendants  
having been by me first duly sworn  
deposes as follows.

I am 71 years of age, have lived  
where I now reside 48 years. The  
farm on which Nimrod Nae lives  
and owns, joins my farm on  
the west. Mr Nimrod Nae purchased  
the farm on which he lives from  
Jonathan Hartsock and Hartsock  
purchased it from George R. Ely



Hartrock lived on the place several years, possibly as long as fifteen years, while Mr Hartrock owned the land and was living on it. he showed me a <sup>large</sup> Spruce Pine then dead with marks on it as a fore and aft line tree. The bark was still on the tree and the marks were very plain. This tree stood near the Harlan road on Moil path on the west side of the path leading to Harlan, on a flat above the first little spur, that the road ascends not far from where there is indications of Lion ore, I think a little below where the Lion ore shows. ~~probably~~ nearer the second ascension of the road than the top of the first. Mr Hartrock at the same time or afterwards showed me a double Poplar that forks about three feet from the ground, one fork points north and the other south. standing from the spruce pine about one fourth of a mile in an eastward direction. which he pointed out to me as line trees. his land extending



Northwood to said Spruce Pine  
and Poplars. both prongs of the  
double Poplar were marked on the  
inside as though the line ran  
between them, both these trees  
stand on the south side of the  
Cumberland Mountain. I am badly  
crippled with rheumatism, have not  
walked a step for ~~three~~<sup>ten</sup> years  
and it would be impossible for  
me to go to Court as a witness,  
or to go to the trees spoken of. I  
visited Mr. Tyler Coomer before I  
got so that could not walk, and  
he then lived in the house that  
he built on the east side of  
the Harlan road, and in which  
I am informed that he had  
lived until recently when he  
built a new house in which he  
now lives.

And further this deponent soith not.

John <sup>his</sup> Pennington  
mark

Witnessed & sworn  
1 day 50

Virginia Lee County Court:

I, Henry C. Forgy a Justice of the  
Peace for the County and State  
aforesaid, do Certify that the fore-  
going deposition of John Pennington



Minrod v. Mac

vs. Deposition

J. L. Copner &  
Wm. H. Copner

depo of John Pennington

Received from the Justice  
& filed Nov 28th 1891  
J. A. W. Hayatt

P. Fee for  
deposition Nov 28

was duly taken Subscribed and  
Sworn to before me at the time  
and place mentioned in the  
Caption of the same.

Given under my hand this 28<sup>th</sup>  
day of November 1891.

H. C. Jocelyn J. R.



The depositions of Charles D Boney  
Martha J. Boney, Mary E. McElroy, J. W. M. Grabel & others  
taken at the office of James W Orr.  
in Jonesville Va. on the 17th day of Nov.  
1890, by consent of parties, to be read as evi-  
-dence on behalf of the ~~half~~ plaintiffs in  
a certain suit in chancery now pending  
in the Circuit Court of Lee County Va, in  
which Charles D Boney & Martha J Boney  
his wife are plaintiffs and Nimrod Vae &  
other defendants.

The said Charles D Boney a minner of lawful  
age and being duly sworn deposes & says.

Question. <sup>There is a witness objected to be called</sup> by plaintiffs Counsel. <sup>the husband of the party interested</sup> <sup>Counsel on Def.</sup>

State all about the transaction between  
Nimrod Vae and your wife by which he  
made her a deed or deeds for an interest  
in his lands, and especially in regard to  
the deed of May 26th 1883. <sup>The 2nd witness is objected to be called</sup> <sup>by the plaintiffs Counsel</sup> <sup>on Def.</sup>

Answer

Objected to because deed is the  
best evidence of what contract was  
re <sup>Counsel for Defs.</sup>

Mr Nimrod Vae made a deed to Albert,  
Monroe, Drucillie, and Martha and  
David Vae his children, after this  
deed was made there was two other  
children born, William and Mary, and  
after myself and his daughter Martha



were married Mr Nae came to  
Martha, and <sup>and all the other children</sup> wanted her to make  
a deed back to him for the land  
he had deeded them. So that he  
could make the other children  
equal with those he had deeded  
his land to. She complied with his  
request - by his agreeing to make her  
a deed to 80 acres - which he did by  
deed bearing date May 26<sup>th</sup> 1883.  
We all came to Jonesville to Judge  
Morgan's office, and had him to  
prepare a deed. Mr Nae wanted my  
wife to take her 80 acres on the North  
Side of Poor valley ridge, and on  
the South Side of the mountain  
and not including the cleared land  
saying he wanted the use of the  
cleared land himself. I stated that  
so far as I was concerned, I was  
willing for him to have the use of  
the cleared land during his life  
as I had as much cleared land at  
home as I could use. My wife  
Martha agreed to my proposition in  
regard to the cleared land. Judge Morgan  
then wrote the deed of May 26<sup>th</sup> 1883,



It was my understanding that the deed was written to conform to that agreement, after the deed was written, Judge Morgan read the same and I asked him if that reservation would give Mr. Nae any privilege on any but the Cleared land, and he said it would not.

Ques by Same.

State anything you may have heard the defendant has say at anytime in regard to selling the Iron Ore & timber on the 400 acre tract of land.

Objected because not germane.

~~There is~~ for Nae

Answer. Mr. Nae was talking about selling the Iron ore two or three years ago and perhaps longer ago than that. I heard him say what, some parties had offered him for it. but I don't remember what he said they offered him, after he had sold the oak timber to Mr. Grabel, I went up to where Mr. Grabel was at work on the timber. I spoke to Mr. Grabel about cutting the timber and he proposed that we go and see Mr. Nae about it, we went up to Mr. Nae's gate



and Mr Grabel called Mr Nae out to the gate and told him that my wife sent him up there to have an understanding about the timber matter, and Mr Grabel told him that I was talking about stopping him from sawing, and wanted to know what Mr Nae had to say about it. Mr Nae told him to go along and saw as much as he pleased. Mr Nae said it was his land and timber, he said his deed allowed him to <sup>do as he pleased with the land</sup> <sup>by convey</sup> sell every stick of the timber and all the iron ore and intended to do it. he then told Mr Grabel to go and saw as much as he pleased of the timber. This happened a few days before I brought this suit.

Ques. by same

Did you ever hear Mr Nae say in what part of farm he intended to lay off your wife's 80 acres?

Answer Objected to because not germane & direct is best evidence ~~Provenance of Nae~~

Answer I never heard Mr Nae say anything about that.

Question by Defs counsel,

State if ever <sup>you</sup> heard Mr Nae try to sell the iron ore on this land?



Question 1 by Depts counsel,  
State if every<sup>you</sup> heard Mr. Noe try to  
sell the iron ore on this land?

Answer. I did not hear Mr. Noe offer  
to sell the Iron ore to any one,

Question 2 by same

State ~~how~~ <sup>sub of the 400 acres</sup> many acres of land  
Mr. Noe has sold timber off  
of & where located?

Answer. He sold the Poplar timber off of  
the west end of the farm but I  
cannot say how many acres. He  
sold the White oak & Chestnut oak  
off of about thirty acres on the  
east end of the land.

Question 3<sup>rd</sup> by same

Please state if there is not more  
than 80 acres left of the 400 acres  
which no timber ~~has~~ been  
sold off of how much?

This is excepted to because the 80 acres  
was to be laid off in a certain manner  
and this question is not germane &c.

Or for Depts

Answer. The best estimate I can give is  
that there might be as much as  
80 acres between the east and west  
ends of the land that the timber  
has not been sold off of. but this  
is only an estimate and it might  
fall short of the 80 acres or it



might be more.

Question 4 by same -

Who was present when Judge Morgan stated that Mr. Moe had no privileges under the deed of May 26, 1883, except as regards as to the cleared land?

Answer, I do not remember who was in the house, when Judge Morgan made that statement, I do not remember whether Mr. Moe was in the house at the time I asked the question or not.

<sup>See Introduction</sup> This Witness is objected to because not proper being the husband of the party interested ~~plaintiff~~ & questions & answers are excepted to because not germane, because deed is best evidence & c - Prudence for Def. And further This Deposition is not.

Directed by Plffs' Counsel.

Did Mr. Moe ever tell you who he intended should have the land between that on which he had sold the poplar timber & that on which he had sold the oak timber, and if so who?

Objected to because immaterial

Counsel for Def.

Answer I heard Mr. Moe say on the Sunday



before Mr Erabel moved his sawmill  
into the poor valley on Mr Kae's land.  
that he intended to lay off either  
100 or 120 acres to his son Willie  
taking in the buildings, and that  
portion would be included in the  
boundary between where the timber  
had been <sup>sold</sup> ~~taken~~ off. This talk took  
place in Mr Kae's yard and my wife  
Martha, and Abner McElroy were  
present I think.

And further this deponent with not:  
Charles D Covey  
Martha J. Covey another witness  
of lawful age being duly sworn  
deposes as follows.

Ques - by Plffs Counsel.

State all about the transaction betw-  
een your father and yourself in which  
he executed to you a deed or deeds  
for an interest in his lands, and especi-  
ally in regard to the deed of May 26<sup>th</sup> 1888?

Objected to because the deed or deeds + espec-  
ially the deed of May 26<sup>th</sup> 1888 is the best  
evidence as to what that contract was.

Counsel for Defs.  
Sometime very shortly after the war  
closed, my father deeded a 400



acre tract and a 125 acre tract of his land to his children viz Albert, Monroe, Lucille, myself and David Mae, some 8 or 9 years after this deed was made my father came to me and told me that the rest of the children were willing to make him back a deed to the land and asked me to join in the deed to him, he told me if I would make the deed back to him, he would make me a deed to 80 acres. I then made the deed and he made me a deed to the 80 acres as he had agreed to do, on the day the deed was made to the 80 acres in Judge Morgan's office my father wanted to deed my land part on the ridge and part on the mountain I told him the first deed was not that way, and I did not want it that way, I wanted it to run across the valley, he then agreed to run it square across the valley as stated in the deed,

Does by same.

Did your father at anytime tell you in what part of the farm he would lay off



what part of the farm he would lay off

your 80 acres and if so what did he say about it and when and where was it?

Object is because deed is best evidence - Counsel for

Answer. Sometime last fall about one year ago. I met my father in the road near Gilbert Mae's barn, and I told him I had started up to talk with him some. we had a talk about the land and he told me he intended to or aimed to lay off my land on the upper end, which is the east end of the farm.

Does lay same.

Did your father ever say anything to you about selling the iron ore on the land and if so what did he say and when & where was it?

Answer. My father told me he had been offered Six hundred dollars for his Iron ore, and that he was <sup>rather</sup> ~~so~~ sorry he did not take the man up. This was at his own house, and I think about two years ago.

Does lay same.

Did your father ever tell you who <sup>he</sup> intended that part of his land for on which he has sold no timber and if so when & where was it and what did he say?



Answer. I have heard him say more than once, that he intended the home place, including the buildings for Willie that is this part of the land <sup>including</sup> the buildings, that part of the land would be between the two portions of land off of which he sold the timber

Asks by same.

State whether or not the timber and iron ore on the 400 acres gives to it any peculiar value?

Objected - because immaterial

Count for Deps.

Answer. I think it adds very much to the value of the land. I would much rather have the timber and the supposed iron ore, than to have the land with the timber and iron ore taken off.

Asks by same.

Where is the tract situated in reference to the L & N. Rail Road or Station thereon

Objected to because immaterial - Count for Deps.

Answer. The L. & N. R. R. runs through the farm, and I am informed that a depot or station is located about  $\frac{1}{4}$  of a mile from the east end of my father's farm.



Lives by same.

At the time of the conversation at Albert's barn state anything else your father said in regard to the same matter?

Answer In addition to what I have already stated, he told me that I would get the Commissary, stables, &c on my part when it was laid off, which were then being built by the R.R. Contractors.

This question & answer is objected to because the deed is the best evidence as to the manner of laying off &c. -  
Counsel for Defs -

X examination -

Question 1 by Defs Counsel.

Did you ever read this 1<sup>st</sup> deed spoken of, or how do you know its contents?

Answer I never read the first deed, and I don't know or I heard it read, but I have heard my father talk about the deed, and he said it made us equal.

Question 2<sup>nd</sup> by same -

In the conversation near Albert's barn did your father contract with you to lay off your share on the east end of the farm, and if so what



was the consideration,

Answer

Hee done just as I told you before, he told me he would lay off my land on the upper end, and that he wanted each one to pay his part, and I told him if he would give it up to me as he had the boys I would pay my part, for laying off the land. That is Commissioners Surveying &c

Question by same

Did he agree to this & have land layed accordingly?

Answer

There was a little difference between us, and he did not lay off the land, he wanted me to pay my equal portion of the expense and I would not agree to do it unless he would give me possession like he had the boys, and he would not do it, and the matter dropped.

Question by same

Has your father sold any Iron ore off of the 400 acres of land, or ~~the same~~ ~~you~~ heard him try to sell same?

Answer

Not that I know of, neither have I heard him try to sell it, all I know is what he told me himself,



2 heard him try to sell it, all I know  
is what he told me himself,

Question by same

How many acres <sup>of the 400</sup> has he sold  
the timber off of?

Answer. I cannot tell,

Question by same

How much land does the "house  
place" cover, that how many acres?

Answer. I have always understood there was  
400 acres in the house place, but  
he was to log off 100 acres to Willie  
and to include the buildings.

And further this deponent saith not.

Martha J. Leoney

Mary E. McElroy another witness  
of lawful age being duly sworn  
deposes as follows.

Direct by Plff's Counsel.

State whether, or not you ever heard  
your father, <sup>Vincent</sup> say what part of his farm  
he intended to lay off to Martha J. Leoney  
for her 80 acres, and if so what did he  
say and when & where was it?

Objected to because the deed is  
best evidence & not genuine - <sup>cannot</sup> ~~cannot~~

Answer. I have heard him say he could  
lay her 80 acres off on the upper  
side of the house or on the  
lower side of the house or any



- where ~~he~~ saw fit to lay it off, &  
mean by upper and lower side  
of the house. East and west  
of the house. & have heard  
him say this several times before  
this suit came up

Does by same.

Did you ever hear him say he would  
lay it off on the East end adjoining  
Mr Pennington?

Objection, because ~~that~~ is best evidence  
Counsel for Def-

Answer. I have heard him say he could,  
but never heard him say he  
would so lay it off.

Does by same.

Did you ever hear him say who he  
intended to have the buildings &c.

Answer I did not.

Witness claims And further this deponent saith that,  
1 doz 50 cts.

Mary E McElroy

J. W. M. Grabel another witness  
of lawful age being duly sworn  
deposes as follows.

Does by Plffs Counsel.

Please state whether or not you purchased  
some timber from Mr Nimrod Lee and all about  
- it -



Answer.

I bought a lot of White oak and Chestnut oak Timber of Mr Noe on Poor valley ridge on the north side for which I agreed to pay the sum of Three hundred dollars. ~~I~~ In answer to a question by the defendant. I will say that I have a written Contract with Mr Noe. This objection is objected to because the written contract is the best evidence as to what the agreement was &c - Counsel for def - I commenced to cut & saw the timber in July the latter part, and went on sometime when one day Mr Cowley came to me in the woods and told me his wife had some interest in that timber, and talked like he did not like to have it cut. I told him the only way he could stop me was according to law. and I proposed to him that we would go to Mr Noe and have a talk with him about it. we went and I told Mr Noe about it and he told me to go ahead and cut it all to pieces, or according to Contract, Mr Noe said he would



Sell The Iron ore and Timber too,  
Soon after This I was stopped from  
Cutting by an injunction having  
been served upon me.

Ques by same,

On about how much land did you  
purchase the said oak timber and on  
what portion of the farm?

Ans. I guess on about fifty acres, on  
the east end of the farm.

Ques by same,

Did Mr Nae say anything to you  
about being obliged to sell the timber  
or not obliged to & what did he say?

Answer. Mr Nae said he was not obliged to  
sell the timber when I bought it,  
he said he could live without,

Ques by same.

About how much of the timber did  
you cut?

Answer. I should suppose about one  
half of the timber has been cut,  
of the fifty acres or boundary.

Ques by same

Do you or not consider the cut-  
ting and removing said timber any  
waste or damage to the reversionary



interest in said land?

Objected to because not genuine

2. Should think it would be a damage, it would in my opinion damage the land one half at least 2 would make one half difference,

And further this deponent with not.

J. W. M. Grabel

The further taking of depositions in this case is hereby continued until tomorrow Nov 18<sup>th</sup> 1890.

This Nov 17<sup>th</sup> 1890. H. C. Jorlyn J. P.

The taking of depositions in this case is resumed pursuant to adjournment, this Nov 18<sup>th</sup> 1890.

John H. Fleenor another witness of lawful age and being duly sworn deposes & says,

Qued. by Plffs' Counsel.

Please state whether or not you had a conversation with Nimrod Lee in regard to the iron ore on his lands in Poor Valley, and if so when and where was it and what did he say?

Objected to because irrelevant, impertinent  
+ c. Counsel for Def.

Witness  
claims 1 day  
50 cts



Answer. I think it was in the month of May lost. I was at Mr Noe's house and in a conversation with him he told me he had a fine bank of Iron ore on his farm, and stepped into the yard and brought in a piece of ore and showed it to me, and told me some parties had made him an offer for it, and he told me how much it was - but I cannot at this time remember how much he said. but I know it was a pretty big sum. I said to him that if I was in his place I would sell while the boom was up - and he said he would when they would give him enough

### X Examination

Question 1 by Def Counsel

Who was present when this conversation took place?

Answer. Mr Noe's wife was present, and Frank Bowman was about the house. but I don't know whether he heard the conversation or not

Ques. 2 by same. Please state if you ever



Know of Minrod Roe trying to  
sell the Iron Ore off his land in  
the Poor Valley?

Answer. I never have, only what I have stated.  
Question 3 by same

Did <sup>you</sup> ever hear Mr. Minrod Roe try  
to sell the Iron Ore off his land  
in the Poor Valley <sup>to anyone</sup> & do you know  
that he has ever tried to do so?

Answer. I never heard him try to sell it  
to anyone, all I know about it is  
what I have told you, I never  
heard him have a conversation  
to anyone else about it.

Witness And further This deponent with Nat.  
Claims, 1 day 50cts

J. H. Fillmore  
The further taking of these depositions  
is adjourned until tomorrow Nov 19<sup>th</sup>  
1890. This Nov 18<sup>th</sup> 1890.

H. C. Foslyn J. P.  
The taking of depositions in this case  
is resumed pursuant to adjournment  
this Nov 19<sup>th</sup> 1890.

John M. Whitehead another witness of law-  
ful age and being duly sworn deposes &  
says.

Direct by Pliffs' Counsel.

Please state whether or not you had



a conversation with Mr Nimrod Nae in regard to his selling timber to Mr. Grabeel and if so, when and where was it and what did he say?

Answer. A short time after Mr Grabeel commenced to sow timber on Mr Nae's land, Mr Nae and myself were standing in front of David Nae's house in poor valley. There came up a conversation between Mr Nimrod Nae and myself about himself and Mr Grabeel and the timber. Mr Nae then said that he had sold to Mr Grabeel a boundary of timber on the <sup>East</sup> end of his ridge land. he said he had ~~sold~~ the timber for three hundred dollars - and had received one hundred dollars of the money, and as soon as the next payment was due from Mr Grabeel if he did not pay up, he should sue him, I remarked to Mr Nae that he did not need the money, and he said no, that he had placed the money he had received in the bank,

This answer is sufficient to in so far as it refers to my & the written agreement between Mr. Grabeel & Nimrod Nae.

Council for def-



Witness claims And further This deponent soith not.  
1 day 50 cts.

J. C. Whitehead

The further taking of depositions  
in this case is adjourned until  
tomorrow Nov 20<sup>th</sup> 1890.

This Nov. 19<sup>th</sup> 1890. W. C. Joslyn J. P.  
H. J. Morgan, another witness of lawful  
age being duly sworn deposes as  
follows, Nov 20<sup>th</sup> 1890.

Ques by Same Plffs' Counsel.

Did you write the deed of May 26<sup>th</sup> 1883,  
from Vinrod Vae to Martha J. Corey and  
take his acknowledgment thereto? A copy of  
which is filed as an exhibit with Plffs' bill.

Answer I did write a deed between the  
parties dated May 26<sup>th</sup> 1883. and  
I now hold in my hand the  
original paper.

Ques by Same.

Did you or not write said deed according  
to the agreement between the parties and  
as they directed?

Answer. I do not remember now, anything  
particular that was said between  
the parties at the time said  
deed was written by me. for  
them. but I am satisfied in  
my own mind, that I tried



to write said deed. in conformity  
with the agreement between the  
parties as I understood it then.

Does by same.

Did you or not read said deed to the parties  
before it was signed and acknowledged by  
Mr. Nae, the grantor?

Answer As an independant fact I do not  
remember what took place at  
the time said deed was written,  
but I do not believe that I ever  
wrote a deed for a party to sign  
and acknowledge before me, but  
what I read it to him carefully  
before presenting it to him for  
his signature, and hence I  
feel satisfied in my own  
mind, that I did read said  
deed to Mr Nae before he signed  
and acknowledged it,

Does by same.

Please look at said original deed and  
explain what right you intended, by the  
language therein contained, to reserve  
to the said Winward Nae & wife in the land  
by said deed conveyed?

This question & ans. - Objected to in so far as it seeks to vary  
& contradict the deed & prior verbal testimony.  
Counsel for Def -



Answer.

I cannot state what Construction may be placed upon said deed and reservation by others, in the reservation therein contained by the Grantor in favor of himself and his wife or the Survivor of Them - but my own Idea of it now is, and I think it was my idea and object at the time, to insert a reservation of an ordinary life estate in favor of himself and wife or the Survivor of Them in other words to give them the ordinary rents and profits of the land during the life of the Survivor of Them.

X Examined.

Question by Defts Counsel

Can you state that you employed such language ~~in~~ said deed to express the exact intention of the Grantor, Nimrod Roe?

Answer I cannot.

Question by same

Are you acquainted with the said Nimrod Roe, & if so, is he not an uneducated man & might it not be possible that the said ~~Nimrod~~ Roe misunderstood



the language employed in said deed?

Answer

I am well acquainted with Mr. Har-  
lowe known him for thirty years  
and I think he is an uneducated  
man, and for aught I know he may  
not have understood the language  
I used in writing said deed.  
And further this deponent soith not.

Henry J. Morgan

Virginia Lee County To-wit:

I, Henry C. Foslyn, a Justice of the  
Peace for said County, do hereby  
Certify that the foregoing depositions  
of Charles S. Covey, Martha J. Covey  
Mary E. McElroy, J. W. M. Crabel, John  
H. Fleener, John M. Whitehead and  
H. J. Morgan, was duly taken sworn  
to and subscribed before me at the  
time and place mentioned in the  
Caption of the same. Given under  
my hand this 20<sup>th</sup> day of Nov 1890  
H. C. Foslyn J. P.

Chas S. Covey & wife  
vs. } depositions

Vermod Doe & others

Filed Nov. 20, 1890

J. C. Foslyn J. P.

Depositions of

Chas S. Covey

Martha J. Covey

Mary E. McElroy

J. W. M. Crabel

John H. Fleener

John M. Whitehead

H. J. Morgan

J. P. Fee \$5.00



The depositions of Nimrod Nae  
S.W. Nae, David R. Nae W.H.C. Nae  
taken at the office of James W. Orr  
in Jonesville Va on the 19<sup>th</sup> day of  
Nov 1890. by Consent of parties, to be  
read as evidence on behalf of the  
defendants. in a Certain suit in  
Chancery now pending in the Circuit  
Court of Lee County, Va in which  
Charles S. Covey and Martha J. Covey  
his wife are plaintiffs and Nimrod  
Nae & others defendants.

The said Nimrod Nae a witness of  
lawful age & being duly sworn de-  
poses & saith:

Question by Defs. Counsel.

Please state the transaction between  
yourself & Martha Covey, your daughter,  
by which you made a deed or deeds for  
an interest in your lands & especially  
in regard to the deed of May 26<sup>th</sup> 1890.

This question <sup>various answers thereto</sup> is objected to in so far  
as it is intended to contradict or vary  
the deed of May 26<sup>th</sup> 1890.

Orr for Plffs.

Answer. I first made a deed for all my land  
to my children, and after about five  
years there was two more children



born. I then mounted the land  
deeded back so that I could make  
all my children equal. The children  
deeded the land back to me as  
I had requested. Sometime after  
that I deeded 80 acres of my  
land to Martha J. Covey by deed  
dated May 26<sup>th</sup> 1883. My understand-  
-ing was that I was <sup>to have</sup> ~~that~~ the land  
and it was to be mine, during my lifetime  
and the lifetime of my wife

Question 2 by same

State whether or not you intend at some  
future time to lay off said 80  
acres in exact conformity to the  
said deed of May 26<sup>th</sup> 1883:

Answer Yes sir, of course I do, when I can  
consult the interest of my other  
children.

Question 3 by same

Please state whether or not you have  
ever agreed or contracted with your  
daughter Martha to lay off said  
80 acres at the east end, west  
end or any particular part of  
your land?

This is objected to because intended  
to contradict deed, Or for Pff.



Answer. Never in my life, since the deed was made.

Question 4 by same

Please state whether or not the deed of May 26<sup>th</sup>/1883 is the only contract you have ever made with your daughter Martha J. ~~with~~ <sup>in</sup> regard to ~~conveying~~ <sup>conveying</sup> off said 80 acres.

Answer. That is the only one.

Question 5 by same.

Please state how much & what timber you have sold off the 400 acres of your land in the Poor Valley. How many acres & all about it.

Answer I think about thirty acres on the east end, and about twenty on the west end, and there is more than two hundred acres running through the farm, that I have not sold a tree off of.

Question 6 by same

Please state why you sold the above mentioned timber, with the 30 acres off each end & 20 acres of west end?

Answer I was hard pressed for money, and I had two milk cows and tried to sell one of them, but could not. Then



2 Sold The timber to get money to  
pay my taxes and run my family.

Question 2 by same

Please state if ~~any~~ one has tried  
to buy your horse one of the 400 track  
& if so have you sold ~~any~~?

Answer As high as Three or four have come  
and tried to buy it, and I told them  
that I would not sell it.

Question 3 by same

State whether or not you have ever required  
~~any~~ <sup>this</sup> intention of laying off one of your  
son's share on the west end of your  
farm, & if so, how much of the timber  
sold off said part would it cover?

Answer. I have told my son David that I would  
lay him off his part on the west  
end of the farm, and that would  
cover all the timber I have sold  
on the west end of the farm; he  
has been living on it about four  
years, and has done some building  
on it. his share would be one hundred  
acres.

Question 4 by same

State what kind of timber you have  
sold on the west side & east side  
respectively & ~~about~~ quantity?



sold on the west side & east side  
respectively & without quantity?

Answer. I sold 40 or 50 <sup>Poplar</sup> trees on the West  
side, and on the East side I sold  
about thirty acres of the oak and  
Chestnut

+ Examined.

Ques. by Piffs' Counsel.

Was there any reservation in the first  
deed of which you speak?

Objection to because the deed is the  
best evidence - Counsel for Def.

Ans. Yes sir, ~~there~~ there was.

Ques by same.

When the deed of May 26<sup>th</sup> 1883. was made  
was it not read to you by Judge Morgan  
before you signed and acknowledged it?

Answer. Not that I remember of,

Ques. by same.

Have did you happen to acknowledge it  
without knowing its contents?

Answer. I don't know. it might have been read  
to me. I don't recollect that it was  
or was not,

Ques by same

If the deed was read to you did you or  
not then think it contained the contract  
between you <sup>and Martha J.</sup> and expressed it correctly,  
and if you had then thought differently  
would you have executed it under that -  
- impression.



Objected to because in form of a argument -  
Counsel for Def.

Answer I dont remember what I Thought it  
Contained, but if it was read and  
I Thought it did not contain the  
Contract I would not have signed  
it.

Ques by same.

Have you made a deed to your son  
David for a part of your land?

Answer I have not.

Ques by same.

Now does it happen that you have  
designated to him a certain homaday  
and have not done so, as you say,  
to Martha J. to whom you have made  
a deed several years ago? <sup>objected to because</sup>  
<sup>in form of argument</sup>  
<sup>Counsel for Def.</sup>

Answer. Because I wanted to Consult my  
other children and myself as to  
where to lay it off.

Ques by same.

Did you consult Martha J. before you  
designated David's to him?

Answer. I did not.

Ques by same

Is it not your intention not to lay off  
Martha J's 80 acres until you are Compelled to?



Answer It is my intention to lay it off  
after I have studied the other children's  
interest sufficiently.

Does by same

Do you ever consult Martha J. in re-  
gard to these matters when consulting  
with your children?

Answer I never have consulted with any of  
my children in regard to laying off  
my land.

Does by same.

Have you ever signified in conversations  
with any one where you intended to  
lay off her 80 acres?

Answer Not at all, that I know of.

Does by same.

Did you reserve, in your deed of May  
26th 1883, the right to consult your  
other children or any one else as to  
where the 80 acres should be laid off?

Objected to become deed is the best  
evidence - Counsel for Def.

Answer. I never did.

And further this deponent saith not.

Nirrod <sup>his</sup> X <sup>mark</sup> Nae

Albert W. Nae another witness of lawful  
age being duly sworn deposes as follows.

Question by def. counsel - Please state if you



you had a conversation with Martha J. Coney, or ~~your father~~ Nimrod Noe in regard to his share, <sup>in his land in the valley</sup> & if so, what was it? Objected to so far as relates to Nimrod Noe's statement because inadmissible.

Err for Plffs.

Answer

I did have a conversation with Martha J. Coney. She proposed to sell it to me and offered to take four hundred & twenty dollars for it. I told her that I did not believe I would buy it, that I had rather buy land adjoining my own, and Martha told me that she expected Father would lay hers off on the west end if I wanted it down there. I then mentioned it to Father and he said he had no objection to my buying it, but he did not know where he would lay the share off at,

Question

I by came.

State whether or not you knew Nimrod Noe's financial condition shortly before he sold Grabel the timber on the East side of his land & if so, what was it, & is he your father?



your father?

This question is objected to because immaterial. Orr for Plff.

Answer. Nimrod Nae is my father, If he had any money at the time, I did not know it.

Question 3 by same - State whether or not you were acquainted with your father's financial condition shortly before he sold the poplar on the west end of his farm, if so, what was it? Objected to for same reason.

Orr for Plffs.

Answer. If he had any money I did not know of it. I was well acquainted with his financial condition, at the time.

Question 4 by same

State whether or not you know what timber your father has sold off of his land in the Poor Valley & if so, how much ~~has~~ left which he has not sold the timber off of?

Answer. I cannot say that I can tell all about it, but think there would be at least one hundred acres, to take a strip across the valley that he has not cut or sold any timber from.

+ Examined.



Thres by Pliffs counsel.

Please state where the timbered land on your fathers 400 acre farm is situated?

Answer.

It is on The North side of the ridge and South side of the mountain, I think there is probably a little the most on the ridge,

Thres. by Same.

Did you & your brother Wm M. buy the poplar timber on North side of ridge & west end of farm, from your father? and if so why did you not at same time buy it on the east end?

Objection is because immaterial to any issue in the cause - Counsel for Defor

Answer

We did buy some timber from him, we bought 2 believe fifty trees on the ridge, on the west end of the farm. We bought this timber about two years ago, and we have sold part of the trees to H. J. Russell. We would have bought <sup>more</sup> ~~the timber on~~ ~~the east end~~ but he would not sell it, he said he needed a little money or he would not have sold me what he did,

Thres by Same



State as near as you can the width of the strip of land on the North side of the ridge between the two pieces on which the timber has been sold?

Objected to because immaterial - Counsel for Def.

Answer. I should think it was about two hundred yards perhaps more.

Does by same.

You speak of your father's financial condition. Now is it not a fact that he sold a quantity of oats, hay and other farm products to the Rail Road Contractors, not a great while before he sold the timber to Grabel, for which he received a considerable sum of money, or at least some 75 or \$80.00?

Objected to because immaterial, impertinent & inadmissible - Counsel for Def.

Answer. He told me he sold two small stacks of Oats and a little Hay - but I don't remember what he sold he got, for it all,

Does by same

Have you ever heard your father say who he intended should have the strip of land between where the timber is sold and including the buildings?

Objected to because immaterial - Counsel for Def.



Answer. I never have that I know of.  
Does by same

Did not your father tell you when  
you and your brother bought the pop-  
lar timber on west end that he would  
not sell the poplar on the East end  
because he intended that for Martha?

Answer. He never did.

And further this deponent swith not.

A. W. Noe

David R. Noe another witness of lawful  
age being duly sworn deposes as follows,

Questions by def counsel:-

Does Minus Noe your father; & state  
whether or not you know his finan-  
cial condition shortly before he sold  
the <sup>poplar</sup> fifty poplar trees to Albert & Wm  
M. Noe, & if so, what was it?

Objected to because immaterial.

Orr for Puffs.

Answer. He is, about the time he sold the  
timber he told me he owed the  
boys, and he had to pay his taxes  
and he could not get any money other-  
ways, and he was compelled to sell  
the trees on that account.

This answer is excepted to because it is



This answer is excepted to because it is

not admissible for the defendant to  
to halster himself by proving his own  
statements about this or any other matter.  
Or for Plffs.

Question by same.

Please state, <sup>as near as you can</sup> how much land of your  
father's ~~land~~ in Poor Valley is left  
which he has not sold timber off  
of?

Answer.

I should think there was one  
hundred acres or more, taking it  
square across from south line to  
the North line.

+ Examined

Ques by Plffs' counsel.

Do you know the fact, or have you  
heard your father say, that he gave an  
option on his iron ore?

Answer.

~~Objected to because immaterial.~~ Counsel for Dy.

Answer

I heard him say he sold his iron  
ore, and gave the parties twenty  
days to take it in, I think this  
was in the year 1887.

Ques by same

State if you ~~remember~~ <sup>know</sup> how much hay,  
oats &c your father sold to the Rail  
Road Contractors before he sold the  
timber to Grabeel and what unit



he realized therefor?

Objects to be made immaterial, impertinent  
& inadmissible. Counsel for & of.

Answer. He sold some two or three stacks  
of Oats and Hay but if he sold how  
much he got for them I don't recollect the  
amount. I know of his selling two  
stacks of Hay and a stack and a  
half of Oats, I think he said he got  
ten dollars for one stack of oats.

Witness.  
1 day 50 cts.

And further this Deponent saith prob.

David R. Noel

William H. C. Noel another witness of  
lawful age being duly sworn deposes  
as follows.

Question by Dep. Counsel - Is Minors Noel your  
father; ~~Also~~ you know what timber  
he has sold off his land <sup>in the Port Valley</sup> & please  
state whether or not you know his  
financial condition shortly before  
selling said timber, & if so, what  
was it?

Answer. He is my father, and I am acquainted  
with the timber sold. I am also  
acquainted with his financial condition  
shortly before he sold his timber, he  
was needing money at the time he  
sold the timber, he was not able  
to do any work of account.



Question 2 by same

How much land is left <sup>of this 4000 acre tract</sup> off of which  
he has not sold timber + State  
AD. ~~near~~ as you can how wide is  
the strip between where he has sold  
timber on the North side of Poor  
ridge, or south line of said land?

Answer

I should think there was about  
one-hundred and fifty acres left  
between ~~the~~ where he has sold the  
timber off - taking it straight across,  
from the South to the north line.  
I should think it was about 400  
yards across where he has sold no  
timber.

Question 3 by same

Please state whether or not you ever  
heard any one ever try to buy the  
brown ore off of the land in Poor Valley  
+ if so, ~~did he sell it?~~

Objected to because inadmissible as it  
seeks to bolster by proving a negative.

On for Plffs.

Answer. I never knew of his trying to sell,  
but I have known of different persons  
trying to buy it - but he never would  
sell

+ Examined



Ques by Plffs' Counsel.

By what means or information did you become acquainted with your father's financial condition at the time referred to?

Answer. I got my information partly from my father - and I was there with him and knew his condition.

Ques by same.

State if you know, how much your father realized from the sale of his hay & oats to the R.R. Contractors or from any other source & when?

Object to because immaterial, & inadmissible — Counsel for Def.

Answer He sold Two Hay stacks and Three Oat stacks, one a very small one. he told me he got ten dollars each for the Hay stacks - but I don't know what he got for the oats. This was about one year ago, I don't know of his getting in any money from any other source.

Ques by same

Have you any knowledge <sup>of the fact</sup> or have you heard your father say at anytime he had sold his Iron ore or given an option on same?



Answer. No 2 never home.

Does by same

Did your father at any time inform you in what part of his farm he intended to lay off or give you some land?

~~Answer~~

Objection is because immaterial & inadmissible

Counsel for Def.

Answer.

He has told me he would give me the part of the farm that includes the buildings if I would stay at home and be a good boy, and take care of him, and at other times he has told me he would give me nothing, what I mean by the home place is about one hundred acres including the buildings.

Does by same

Would not this 100 acres be embraced in the 150 acres referred to by you in your examination in chief?

Objection is because immaterial & inadmissible.

Counsel for Def.

Answer.

About twenty acres and perhaps more maybe thirty acres.

Does by same

Have you heard your father say where he intended to lay off David's share and any other share if so where?



objects to because immaterial & irrelevant

Answer for Def

Answer. I have heard him say that he <sup>aimed</sup> ~~intended~~ to lay David's off on the west end and that he <sup>aimed</sup> ~~intended~~ to lay Mary's off on the upper end, also that he <sup>expected</sup> ~~intended~~ to lay Martha's off on the upper end, and also that he might lay Martha's off next to David taking in the Briar field.

Ques by same

When did you hear him say he would lay off Mary's on upper end?

Answer. I have heard him say it since this Suite was instituted, I think I have heard him say it before this Suite was instituted, but am not certain.

Ques by same

When did you hear him speak of laying off Martha's on upper end and when did he speak of laying it off on lower end?

Answer. I heard him say it, two or three years ago, in regard to the upper and lower end both about the same time, since the institution of this Suite I have heard him say



he expected to lay North's Fort  
off next to David's or next to  
me if I should fall next to  
David on the boat.

And further this deponent soith note

Willie, H. C. Noel.

The further taking of depositions in  
this case is hereby adjourned until  
Tomorrow Nov 20<sup>th</sup> 1890.

This Nov 19<sup>th</sup> 1890. H. C. Joslyn J. P.

No further witnesses appearing the taking  
of depositions for the defendant is <sup>closed</sup> ~~adjourned~~  
Nov. 20<sup>th</sup> 1890.

H. C. Joslyn J. P.

Virginia, Lee county, to wit:

The foregoing depositions of Nimrod Lee  
A. H. Noel, David R. Lee & Willie H. C. Lee  
were taken subscribed and sworn to  
before me at the time and place and  
for the purposes in the caption mentioned.  
Given under my hand this 20<sup>th</sup> day of  
November 1890.

H. C. Joslyn J. P.



Nimrod Nae  
vs. 3 Depositions  
John S. Covey & wife  
Filed Nov. 20 1890.  
J. H. Hyatt ©

Depositions of  
Nimrod Nae  
A. W. Nae  
David R. Nae  
Willie H. C. Nae.

J. P. Fee \$4.50

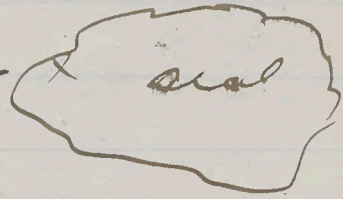


Jonesville, 7<sup>th</sup> July the 18<sup>th</sup> - 1890.  
This day the undersigned has bargained  
& sold to J. W. M. Grabel all of the white  
oak & chestnut timber on a certain  
boundary of land laying on the north  
side of Poor Valley Ridge commencing at  
the upper corner of the field near the  
main road & running south to the first  
Elbow in the Horlan Road thence with  
the fence straight to the Top of Poor Valley  
ridge thence east with the top of said  
ridge to John Pennington's line thence  
north down ~~the~~ ridge with Pennington's  
line to main road running with the  
road west to the commencing. Said J. W.  
M. Grabel agrees & binds himself to  
work up & get off all off said timber  
by the 1<sup>st</sup> day of December 1890. Said Noel  
agrees to give <sup>said</sup> Grabel the privilege of  
putting two steam saw mills on the  
Creek any where along the boundary of  
timber that the mill men may think  
best adapted to said work. Said  
Grabel agrees & binds himself to pay to said  
Noel the sum of three hundred dollars <sup>as follows</sup> cash  
in hand one hundred dollars, when work  
is half done one hundred dollars & when  
work is completed the remainder one hundred  
dollars. Said mill is not to be put on the



inside of my meadow but will set in  
the bottom on the north side of the Poor  
Folly Creek.

Witness <sup>his</sup> X <sup>Noe</sup>  
J. W. Mc Grubel <sup>mark</sup>



A copy from the original.

Leati, D.C. Sewell Deputy  
Clerk for John R. Gibson Clerk of  
Lee County Court, Va.

Witness <sup>Noe</sup>

~~Copy of~~ } Contract

J. W. Mc Grubel

By Consent of the  
parties this copy of  
agreement is filed  
in place of the  
original, with the  
depositions in the  
case. W. C. Jordan J.P.

This copy of agreement  
is stipulated to being  
introduced as testimony  
in this case, because  
immaterial to any case  
in the case.

Cornel for Dep.



I Martha J. Carey, do solemnly swear  
that I am informed and believe, that  
> my father, Nimrod Nae, in buying off to  
me Eighty acres of land, pursuant to the  
decree of the Circuit Court of Lee County Va.  
at the Decr. term 1890, in the Chancery Cause  
of myself & husband against said Nimrod  
Nae & others, and which 80 acres was sur-  
veyed & reported in said cause by L. M.  
Carmical S. L. C. Decr. 16<sup>th</sup> 1890, included  
in said Survey of 80 acres, some twenty  
two or twenty three acres of land in the  
possession of, and claimed by, George  
Tyler Coomer <sup>& wife</sup>, and which is ~~in controversy~~  
in a suit in ejectment since then brought,  
and now pending in said Court, by said  
Nimrod Nae against-said George Tyler  
Coomer & wife. So help me God.

Martha J. Carey

Sworn to and subscribed before me,  
February 16<sup>th</sup> 1890. J. A. Hyatt Clerk



Martha J. Carey  
vs { Affidavit  
Nimrod Lee.

Filed Feb 18<sup>th</sup> 1891.

J. A. Hyatt C



This Deed made this 26th day of May  
1883. between Nimrod Doe of the first  
part, and Martha J. Cory wife of  
Charles D. Cory of the second part, all  
of the county of Lee State of Virginia  
Witnesseth that the said Nimrod  
Doe is now the owner of a tract  
of land lying in Lee County Virgin-  
ia, on the North side of the Poor Val-  
ley Ridge in the Poor Valley and  
on the South side of Cumberland  
Mountain containing by estimation  
400 acres and is the same tract  
on which the said Nimrod Doe  
now lives, now in consideration of  
the natural love and affection which  
the said Nimrod Doe hath and doth  
bear towards the said Martha J.  
Cory, who is his daughter and for  
and in consideration of an dollar  
to him in hand paid by the  
said Martha J. Cory the receipt of  
which is hereby acknowledged, the  
said Nimrod Doe doth by these  
presents give, grant, bargain, sell  
and convey unto the said Martha  
J. Cory her heirs and assigns ei-  
ghty acres of land, out of said  
400 acre tract, and the same



to be laid off by the said Nimrod  
Doe in any part of said 400 acre  
tract, so that the same is laid off  
by parallel lines running across  
the Poor Valley from the South line  
of said 400 acre tract on the North  
side of the Poor Valley ridge to the  
North line of said tract on the  
South side of said Mountain so  
that said 80 acres shall run square  
across said Poor Valley. To have and  
to hold said 80 acres hereby con-  
veyed with all its appurtenances  
unto the said Martha J. Covey and  
her heirs forever, and the said  
Nimrod Doe hereby covenants  
that he will warrant generally the  
title to the 80 acres hereby conveyed,  
But the said Nimrod Doe doth here-  
by reserve to himself the use  
and occupation of said land here-  
by conveyed during his life and  
the life of his wife or the survivor  
of them, And the said Martha J.  
Covey is to have no further part  
of any real estate that the  
said Nimrod Doe may be  
owner of, and she doth hereby  
accept this conveyance as her



full share of such real estate  
witness the following signature  
& seal

Minrod <sup>his</sup> Doe Seal  
Virginia Lee County to wit:

I Henry J. Morgan a commissioner  
in chancery of the circuit court of  
Lee County the same being a court  
of record do certify that Minrod  
Doe whose name is signed to the  
foregoing deed bearing date May  
26<sup>th</sup> 1883, personally appeared before  
me in the said county and acknowledged the said writing to  
be his act and deed, given under  
my hand this 26 day of May 1883.

Henry J. Morgan Comr.

Virginia Lee County court clerk's office  
the 26<sup>th</sup> day of May 1883. The foregoing  
deed bearing date May the 26<sup>th</sup> 1883  
between Minrod Doe of the first  
party and Martha J. Long of the  
second party, both of Lee County  
Va. was this day admitted to re-  
cord upon the certificate of  
Henry J. Morgan a commissioner  
in chancery for the circuit court  
of Lee County Virginia.

John R. Gibson clerk



M. J. Covy  
From Copy of Deed  
Vermont Noe

Recorded Deed  
Book 20 P. 228

A

75

Copying of the Record  
from A. R. Gilman etc.



KNOW ALL MEN BY THESE PRESENTS, That we

*Charles D. Levey*  
*Martha J. Levey and M. D. L. Yeary*  
are held and firmly bound unto the Commonwealth of Virginia, in the sum of *Two*

*Thousand* dollars, to the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, hereby waiving the benefit of our homestead exemptions as to this obligation, and any claim, right, or privilege to discharge any liability arising under this bond, or by virtue of said office or trust, in any currency, funds, counter claims or offsets other than legal-tender currency of United States. Sealed with our seals, and dated *4<sup>th</sup>* day of *September*, one thousand eight hundred and *ninety*

The Condition of The Above Obligation is Such, That whereas the above bound

*Charles D. Levey* *Martha J. Levey*  
on *their* bill in Chancery against *Nimrod Roe*  
*& others*

addressed to the Judge of the circuit court of the county of Lee, has obtained from the said Judge an injunction to injoin and restrain *the depts Roe from selling or moving or interfering with said timber trees on said 400 acres of land & said defendants Russell & Grubbs from cutting sawing removing or interfering with said timber trees on said 400 acre tract, until said Roe lay off to sell 80 acres and also*

until the future order of the said court; and whereas it is provided, by the order of the said Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until

*they*, or some one for *them*, shall enter into a bond, with good security, in the clerk's of of the said court, payable to the Commonwealth of Virginia, in the penalty of *Two Thousand Dollars*

Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff, and all such damages as shall be incurred in case the said injunction be dissolved. Now, therefore, if the said *C. D. Levey & Martha J. Levey* shall pay all such costs as may be awarded against *them*, and all such damages as shall be incurred in case the said injunction be dissolved, then this obligation to be void, or else to remain in full force and virtue.

Executed in the presence of

*Charles D. Levey* (SEAL.)  
*Martha J. Levey* (SEAL.)  
*M. D. L. Yeary* (SEAL.)

In the Clerk's Office of the Circuit Court of the County of Lee

This day personally appeared before me *J. A. G. Hyatt*, clerk of the circuit court of the county of Lee *C. D. Levey Martha J. Levey & M. D. L. Yeary* and made oath that *they* <sup>have</sup> estate, after the payment of all *their* just debts, and those for which he *they* bound as security for others and expect to pay, worth the sum of *Four Thousand* dollars, over and above exemptions allowed by law.

Given under my hand this *4<sup>th</sup>* day of *Sept* 1890

Teste: *J. A. G. Hyatt* Clerk.



C. D. Leoney <sup>thel</sup>

vs  $\frac{3}{3}$  Bond

Minors, *Proctor*

Filed Sept. 4<sup>th</sup> 1890.

J. A. S. Hyatt & C



Stake  
C N 81 1/2 E 51  
D  
slab

M. J. Conley's  
Acres  
510 E 248  
N 10 W 254

B A

To the Hon Court of Lee County Va

At the request of Nimrod Nor I have surveyed and laid off the following described tract or parcel of land for Martha J. Conley Wife of Charles Conley it being the same land heretofore deeded to the said M. J. Conley from the said Nimrod Nor as her share of lands in the said estate of said Nor - I have laid off said lands in conformity with description as given in the above named deed and so as not to include any lands from which timber has been cut or removed, save for use upon the farm of said Nor, and although some ten poplar trees had been sold to H. Russell they have not been cut & have been replanted by said Nor - Said land is bounded as follows -

Beginning at a stake & two Chestnut-logs on the top of Poor Valley ridge thence with the top of same S 73 1/2 W 13 1/2 poles N 89 3/4 W 10 poles S 65 1/2 W 16 poles S 76 W 13 1/4 poles to two Chestnut-logs & a stake thence leaving the top of said Poor Valley ridge & running square across the Poor Valley N 10 W 254 poles to a stake on Fishers Line & with the same N 81 1/2 E 51 1/2 poles to a stake thence leaving said line S 10 E 248 poles to the beginning containing 80 Acres

This 16<sup>th</sup> day of Dec 1890

B. M. Carnical S. L. C.

A part of the land above described is included in the lands claimed by S. T. Coomer & wife, but can not state the amount thus included. B. M. Carnical S. L. C.



The within report is excepted to, because there is embraced in the boundary of 80 acres, laid off to the female plaintiff, twenty two or twenty three acres of land, on the North end of said boundary, in the possession of and claimed by George Tyler Coomer + Martha Coomer his wife, and which 22 or 23 acres is not embraced in Nimrod Lee's deed for his 400 acre tract of land, out of which the said 80 acres should have been taken, and because the deft Nimrod Lee has not laid off to the female Plff the 80 acres of land out of the 400 acre tract as required by the decree of the Court at the Decr term 1890, Feb 18th 1891.

James W Orr, for  
Plaintiffs.

Meters & bounds  
of the

M. J. Covey  
80 A Land.

Filed Decr. 20<sup>th</sup> 1890,  
J. A. G. Hyatt

2. 1891 in the matter



**The Commonwealth of Virginia.**

**To The Sheriff Of Lee County Greeting:**

**WE COMMAND YOU TO SUMMON**

*J. W. M. Grabeel*  
*John M. Whitehead & Mary McElroy*

*a Court*  
To appear before the Judge of our Circuit Court of Lee County, at the courthouse on the *17<sup>th</sup>*  
day of *November 1890* term next to testify and the truth to speak in behalf of  
*Chas. D. Leovey & wife* in certian matters of controversy  
pending in our said Court between *said*

*Chas. D. Leovey & wife* Plaintiff, and *Minrod & Co*  
*& others*

*they* Defendant. And this *they* shall in no wise  
omit under the penalty of Twenty Dollars. And have then there this writ. Witness, J. A. G. Hyatt,  
Clerk of our said Court at the Courthouse.

This *7<sup>th</sup>* day of *Novr.* 1890, in the 11<sup>th</sup> year of the Commonwealth.

*J. A. G. Hyatt* Clerk.



Chas. D. Covey  
vs 3 Spw.

Ninrod Noctua

Sept 7th Nov. 1890

Executed by Eunothe  
within witness this the  
18th of Nov 1890

Jm. P Sprinkle Dept  
for A. B. Muncy & Co



# The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon

*J. Russell & J. H. M. Graham*

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the <sup>third</sup> ~~first~~ Monday in ~~September~~ next, being rule day to answer a bill in Chancery exhibited in our said Court

against *Thence* by *Charles S. Covey & Martha J. Covey his wife*

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.  
This *4<sup>th</sup>* day of *Sept* 1890, in the 11<sup>th</sup> year of the Commonwealth.

*J. A. G. Hyatt* Clerk.

A Copy Teste



To enjoin and inhibit the Defendant Minrod  
 Nor from selling or interfering with the timber  
 trees in the lots mentioned in said 400 acre  
 tract of land and said defendants Russell  
 & Graybeek from cutting, sawing, removing  
 or interfering with said timber trees ~~on~~  
 on said tract, until said Nor lay off  
 to female plaintiff's acres and also till the  
 future order of the Court. Bond having been  
 given as required in the order of injunction

L. D. Corney Trustee  
 for the Plaintiff

Minrod vs. the State

202 Sept. Rules 1890.

Specified Sept 4th 1890

by delivering an affidavit

of the contents of the affidavit

to the Court and the State

of the Plaintiff

of Sept 1890

for A. B. Minrod

S. C.